

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking into the  
Review of the California High Cost Fund B  
Program.

Rulemaking 06-06-028  
(Filed June 29, 2006)

**MOTION OF THE  
CALIFORNIA ASSOCIATION OF COMPETITIVE  
TELECOMMUNICATIONS COMPANIES  
TO INTERVENE**

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November 9, 2007

Pursuant to Rules 1.4 and 11.1 of the Commission's Rules of Practice and Procedure, the California Association of Competitive Telephone Companies ("CALTEL"), on behalf of its members<sup>1</sup>, hereby submits this motion to intervene as an interested party in the above-captioned proceeding.

## **I. INTRODUCTION**

CALTEL seeks to intervene in this case for a single reason. CALTEL's members are competitive carriers who rely on access to last-mile connections provided by AT&T California and Verizon California, either as unbundled network elements (UNEs) or as special access circuits. In June, 2006, in R.93-04-003/I.93-04-002, CALTEL filed a "price cap" proposal that seeks to avoid time and resource-intensive cost modeling cases when and if the Commission receives a request from AT&T and Verizon to update UNE rates, and that proposal is still awaiting a Proposed Decision in that proceeding.

Although the Assigned Commissioner's Ruling in Phase II of the CHCF-B Rulemaking expresses a definite preference for the use of reverse auctions in determining B-fund subsidy support levels, it also assumes that some updates to the cost proxy HM5.3 Model will be required. CALTEL is concerned that AT&T and Verizon will base future advocacy regarding UNE rate-affecting cost increases on the results of these cost proxy updates without competitors having the opportunity to participate in the proceeding or hire their own cost experts to examine those results. CALTEL respectfully submits that this proceeding is not the proper forum in which to establish generally applicable rules or methods regarding cost model modifications. Rather, the

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<sup>1</sup> CALTEL is a non-profit trade association working to advance the interests of fair and open competition and customer-focused service in California telecommunications. CALTEL members are entrepreneurial companies building and deploying next-generation networks to provide competitive voice, data, and video services. The majority of CALTEL members are small businesses who help to fuel the California economy through technological innovation, new services, affordable prices and customer choice.

costing approach in this proceeding should be limited to the specific facts related to funding of the CHCF-B. CALTEL has proposed a price cap proposal (which voluntarily agrees to periodic UNE rate increases that are indexed to the inflation rate and other economic factors) expressly to avoid inefficient, litigious, resolution of UNE rate adjustments. CALTEL respectfully submits that the Commission should not inadvertently pre-judge or undermine CALTEL's proposal through any outcome in this proceeding. Therefore, CALTEL requests that the Commission must either 1) delay any cost proxy updates in the Phase II of the B-fund proceeding until the Commission has ruled on CALTEL's price cap proposal or 2) rule that any B-fund cost proxy updates cannot be used by AT&T and Verizon as the basis for proposing future UNE rate increases.

Granting CALTEL's motion to intervene will protect its members' interest and will not harm the interests of other parties in this proceeding. Prior to filing this motion, CALTEL notified the active participants in this proceeding of its desire to intervene, and none indicated an objection to CALTEL's intervention.<sup>2</sup>

## **II. BACKGROUND AND INTRODUCTION**

CALTEL's motion to intervene is prompted by the current uncertainty regarding the scope, timing, and process for B-fund cost proxy updates outlined in D.07-09-020 and in the Assigned Commissioner's Ruling of October 5, 2007. Although CALTEL certainly could have waited to file this motion until additional details were available, it concluded it would be more efficient to raise its concerns now, so that they may be

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<sup>2</sup> Parties indicating they have no opposition to CALTEL's intervention are: Verizon, AT&T, Citizens/Frontier Communications, SureWest, the small ILECs, Cox Communications, TURN, Division of Ratepayer Advocates, XO, Time Warner Telecom, and CCTA. Although these parties do not object to CALTEL's intervention in this proceeding, they reserve the right to address the substantive issues raised by CALTEL in this motion.

considered and addressed by the Administrative Law Judge and Assigned Commissioner in the initial scoping memo for this proceeding.

CALTEL filed a Motion on November 22, 2005 in R.93-04-003/I.93-04-002 requesting clarification of the date when Verizon would be allowed to modify UNE rates adopted in this proceeding and requesting consideration of a process for future UNE rate modifications. The Commission adopted Verizon UNE rates in D.06-03-025 on March 15, 2006, and granted CALTEL's motion in that decision in order to consider procedures for reexamination of Verizon's UNE rates, including options such as CALTEL's price cap proposal, in the next phase of the proceeding. A Prehearing Conference was held on April 25, 2006, and on May 15, 2006, Administrative Law Judge Duda issued a scoping memo that agreed, at CALTEL's suggestion, to include consideration of reexamination of AT&T's as well as Verizon's UNE rates. The Scoping Memo called for parties to file proposals on June 13, 2006, reply comments on July 14, 2006, and rebuttal comments on August 1, 2007, with a Proposed Decision anticipated by October 30, 2006. The schedule was later slightly modified and CALTEL filed its proposal on June 27, 2006, and a Rebuttal to AT&T and Verizon reply comments.

### **III. GROUNDS FOR GRANTING CALTEL'S INTERVENTION REQUEST**

Unfortunately, the issue of reexamination of UNE rates was linked to other Phase 2 issues in this proceeding (specifically, proposals for payment of "true-up" charges in connection with Verizon UNE rates adopted in March, 2006) that have been significantly delayed in order to resolve protests filed in response to Verizon Advice Letters. Therefore, no Proposed Decision was issued in 2006, and in January of this year, CALTEL suggested that ALJ Duda request additional comments from the parties in order to ascertain what impact, if any, commitments made by AT&T to the FCC in

connection with its acquisition of BellSouth have on UNE rates in California. On February 8, 2007, Verizon responded to CALTEL's request and asserted that any commitment made by AT&T to the FCC "neither binds Verizon CA nor informs future consideration of its UNEs". Verizon further stated that "no further briefing is required, and, indeed, an additional comment period will only delay adjudication of the numerous issues already ripe for decision in this proceeding." Nonetheless, there has been no other activity on the issue of reexamination of UNE rates in this proceeding since this date.

The sole relief sought here by CALTEL is to prevent updates to the HM5.3 model in the context of B-fund cost proxies that can be used by AT&T or Verizon in the future as a basis to advocate for increases in UNE rates. CALTEL, having expended considerable resources to intervene in the above-mentioned proceeding and to prepare and brief a comprehensive proposal, should not have to expend resources to duplicate its efforts by also intervening and participating in the CHCF-B proceeding unless and until the Commission issues a decision identifying if and how cost modeling will be used to update UNE rates in the future.

However, because CALTEL does not wish to unduly delay any cost proxy updates that the Commission determines are needed to move forward with Phase II of the CHCF-B proceeding, CALTEL suggests that the Commission could alternatively bar AT&T and Verizon from using any cost modeling results obtained in this proceeding, either at the census block level or "rolled up" to a higher aggregation, in any other future advocacy or proceeding before this Commission.

#### IV. CONCLUSION

For the foregoing reasons, CALTEL requests that its motion to intervene be granted so that CALTEL may seek from the Commission a scoping memo that determines that either 1) any cost proxy updates in the Phase II of the B-fund proceeding will be delayed until the Commission has issued a final decision in R.93-04-003/I.93-04-002 or 2) any B-fund cost proxy updates cannot be used by AT&T and Verizon as the basis for proposing future UNE rate increases.

Dated: November 9, 2007

Respectfully submitted,

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**[PROPOSED]**

**ORDER GRANTING MOTION TO INTERVENE BY  
CALIFORNIA ASSOCIATION OF  
COMPETITIVE TELEPHONE COMPANIES**

On November 9, 2007, the California Association of Telephone Companies (“CALTEL”) filed a motion to intervene in the above-captioned proceeding and to appear and participate as an interested party. No party objected to the motion.

CALTEL has a direct and tangible interest in the outcome of this proceeding and should be allowed to participate to protect the interests of its members.

Good cause appearing, the motion to intervene should be, and hereby is,  
GRANTED.

Dated: \_\_\_\_\_, 2007, at San Francisco, CA.

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Administrative Law Judge